

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONOVAN DEON WHITE,

Defendant-Appellant.

UNPUBLISHED

January 7, 2000

No. 213134

Saginaw Circuit Court

LC No. 97-014799 FH

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, the evidence showed that police officers approached the van in which defendant was a passenger because it was parked illegally on the sidewalk. After defendant, who was visibly nervous and breathing heavily, placed his right hand in the area between himself and another passenger, Gregory Williams, he was ordered out of the van. As defendant moved to exit the van, the police observed a brown paper bag in the area to which defendant's hand had reached. The police ordered Williams out of the van, and confiscated the bag. A search of the paper bag revealed two plastic baggies, each holding numerous individual pieces of crack cocaine. A search of defendant's person revealed a pager and a large sum of cash. A detective who testified as an expert in the manufacture, packaging, and distribution of controlled substances stated that in his opinion, the cocaine was packaged for distribution to others. Defendant's father, who testified on defendant's behalf, stated that he had given defendant a large sum of cash to have his teeth fixed. The driver of the van, who testified on defendant's behalf, stated that Williams brought the bag into the van. Defendant denied that the cocaine belonged to him, and stated that he had appeared nervous because the van was surrounded by police officers.

The jury found defendant guilty as charged. Defendant was sentenced to two and one-half to twenty years in prison, with credit for thirty-six days.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), lv gtd 851 (1999).

To establish that defendant was guilty of the offense of possession with intent to deliver less than fifty grams of cocaine, the prosecution was required to prove: (1) that the substance was cocaine and defendant knew as much; (2) that the cocaine was in a mixture weighing less than fifty grams; and (3) that defendant knowingly possessed the cocaine with the intent to deliver it to someone else. CJI2d 12.3; *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998).

Possession of a controlled substance may be actual or constructive. The question is whether the defendant had dominion or control over the controlled substance. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Actual delivery is not required in order to prove intent to deliver. *Wolfe, supra*, 524. Intent may be inferred from the facts and circumstances. Minimal circumstantial evidence is sufficient. *Fetterley, supra*, 517-518. Intent to deliver can be inferred from the quantity of the controlled substance in the defendant's possession and the way in which the substance is packaged. *Wolfe, supra*.

Defendant argues that the evidence produced at trial was insufficient to support his conviction because it did not establish beyond a reasonable doubt the element of possession. We disagree and affirm. The evidence showed that more than one hundred pieces of crack cocaine were found in a bag in the same area into which defendant's hand was observed to have reached. The credibility of the testimony given by the driver and defendant regarding the ownership of the brown paper bag, and by defendant's father regarding the origin of the cash found on defendant's person, was for the jury to determine. We do not interfere with the jury's resolution of credibility issues. *Wolfe, supra*, 514-515. Sufficient evidence was produced to allow the trier of fact to conclude beyond a reasonable doubt that defendant had dominion and control over, and thus constructive possession of, the cocaine. The fact that the cocaine was cut into individual pieces, coupled with the fact that defendant had a pager and a large amount of cash on his person, would allow the trier of fact to conclude beyond a reasonable doubt that defendant knowingly possessed the cocaine and intended to deliver it to others. *Wolfe, supra*; *Fetterley, supra*.

Affirmed.

/s/ Henry William Saad
/s/ Gary R. McDonald
/s/ Hilda R. Gage